

LEGISLATIVE SUMMARY 1999



FLORENCE BOS, *PRESIDENT*

WALTER VAUGHN, *EXECUTIVE OFFICER*

NOVEMBER 1999

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| STATE PERSONNEL BOARD |
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FORWARD

The following report summarizes measures affecting the State Personnel Board that have been chaptered into law and those that were vetoed by the Governor.

This report covers merit-related legislation that was signed by the Governor. The vetoed legislation is included for your information.

If you have any questions or would like additional information, please contact Ms. Judy Balmain, Director of Legislation at (916) 653-0453.

Walter Vaughn
Executive Officer

STATE PERSONNEL BOARD

CHAPTERED BILLS

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**AB 712 (Firebaugh) California State University:
Disciplinary Action Against Employees
Chapter 283, Statutes of 1999
Effective Date: January 1, 2000**

SUMMARY:

Existing law provides that employees of the California State University may file an appeal with the State Personnel Board for dismissal, demotion, or suspension for cause within 20 days. This bill will extend the time for filing an appeal to 30 days. The bill also extends from 20 to 30 days the period of time in which an administrative employee of the State University may appeal a reassignment to the Trustees of the State University.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division

SECTIONS AFFECTED:

- Amends Sections 89538 and 89539 of the Education Code

STATE PERSONNEL BOARD

**AB 724 (Dutra) State Government:
Year 2000 Problem
Chapter 784, Statutes of 1999
Effective Date: October 10, 1999, Urgency Statute**

SUMMARY:

This bill addresses various additions and amendments to codes in anticipation of computer problems relating to the Year 2000. This report is limited to those sections of the bill that materially and substantially affect the State Personnel Board.

In addition to the reasons listed in Section 19050.8 (temporary assignments and loans of employees) of the Government Code, the State Personnel Board **may** develop and apply rules that govern the temporary assignment or loan of employees to agencies or between jurisdictions in order to meet the challenges posed by the Year 2000 problems.

This bill requires that the State Personnel Board **shall** within 30 days of the effective day of this act, establish guidelines for a Year 2000 Problem Worker Pool which will be established by the Department of Personnel Administration. This pool will fill the needs of the various appointing powers for temporary help during the Year 2000 Problem.

The State Personnel Board **may** provide by rule for conditions of employment for the Worker Pool. If the Board finds it's in the best interest of the State it **may** limit the pool to those classes where there is a demonstrated level of expertise.

The State Personnel Board, within not less than three months, or more than one year, after it finds that there is no longer an emergency, shall end all Year 2000 Problem Worker Pool assignments as the board deems appropriate.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division

SECTIONS AFFECTED:

- Amend Section 311.5 of the Public Utilities Code

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AB 794 (Corbett) Subpoenas: Personal Records
Chapter 444, Statutes of 1999
Effective Date: January 1, 2000

SUMMARY:

This bill broadens the definition of the terms “personal records,” “employment records” and “witness,” and modifies the procedure for serving a subpoena duces tecum for such records.

The bill broadens and further delineates the definition of “employment records” and “personal records” to include electronic data and expand the definition of “witness.” Provides that when deponents identify documents that might be relevant to the subpoena, such identification cannot be made solely by means of reference to the deponents internal record system, if such identification is not clear to individuals not familiar with the deponents record system. States when deponents copy documents themselves they must submit an itemized accounting of their photocopying costs in order to be reimbursed. Gives consumers only 10 days to oppose the production of their personal records as opposed to the prior 15-day period.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Chief Counsel’s Office

SECTIONS AFFECTED:

- Amends Sections 1985.3 1985.6 and 2020 of the Code of Civil Procedure
- Amends Sections 1560,1561, and 1563 of the Evidence Code
- Amends Sections 4055.2 of the Labor Code

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**AB 1001 (Villaraigosa) Fair Employment and Housing:
Discrimination: sexual orientation
Chapter 592, Statutes of 1999
Effective Date: January 1, 2000**

SUMMARY:

This bill amends the Fair Employment and Housing Act (FEHA) to add "sexual orientation" as an unlawful basis for discrimination in employment and housing accommodations. The bill also repeals Labor Code provisions that prohibit employment discrimination based on sexual orientation. This bill provides that any conduct that would have been a violation of Section 1102.1 of the Labor Code, as it read on December 1, 1999, shall be deemed a violation of the FEHA. Both public and private employers are subject to the provisions of the FEHA. This bill codifies the court decisions in *Gay Law Students v. Pacific Telephone and Telegram* (1979) 24 Cal.3d 458 and *Soroka v. Dayton Hudson Corp.* (1991) 235 Cal.App.3d 654, prohibiting discrimination based on sexual orientation.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division
Chief Counsel's Office

SECTIONS AFFECTED:

- Amends Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12955.8, and 12993 and to amend, repeal, and add Section 12955 to, the Government Code
- Repeal Section 1102.1 of the Labor Code

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AB 1234 (Shelley) State Bodies: Open Meetings:

Notice: Violations

Chapter 393, Statutes of 1999

Effective Date: July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to: Executive Order D-3-99

SUMMARY:

Requires posting of meeting notices and minutes of state bodies on the Internet. Requires minutes from emergency meetings to be posted in a public place and on the Internet for a minimum of 10 days. Provisions of this bill concerning Internet notice requirements are not effective until July 1, 2001.

The bill also states a legislative intent to override a recent California Supreme Court decision, Regents of the University of California v. Molloy. The Court ruled that any actions against a state body, with regard to the Bagely-Keene Act, must be filed within 30 days. This bill extends the statute of limitations for bringing an action to have an action of a state body declared null and void to 90 days from the date the action was taken.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division
Chief Counsel's Office

SECTIONS AFFECTED:

- Amends Sections 11125, 11125.4, 11125.5, 11130, and 11130.3 of the Government Code

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AB 1399 (Wayne) State Civil Service: Demonstration Projects
Chapter 357, Statutes of 1999
Effective Date: January 1, 2000

SUMMARY:

Existing law states that if a demonstration project impacts represented employees, there must be a written agreement and concurrence with the union before the project can proceed. This bill will require a similar written agreement with all verified supervisory employee organizations that represent the supervisory employees impacted by a demonstration project before it can proceed.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Personnel Resources and Innovations Division (PRIDe)

SECTIONS AFFECTED:

- Amends Section 19605 of the Government Code

STATE PERSONNEL BOARD

SB 377 (Polanco) Criminal conduct of state employees Chapter 806, Statutes of 1999 Effective Date: January 1, 2000

SUMMARY:

This bill provides that any state employee who intentionally retaliates against an employee who discloses improper governmental activities or cooperates in the investigation of improper government activities shall be suspended for not less than 30 days, and subject to damages, punitive damages and reasonable attorney's fees. If the State Personnel Board (SPB) determines that a lesser penalty is warranted, the reasons for the determination must be made in writing.

The bill also provides that SPB may refuse to examine or certify for state appointment any person who has engaged in illegal retaliation under the Reporting of Improper Governmental Activities Act as found by SPB or a court.

This bill provides that when the inspector General (IG) receives a complaint of retaliation from an employee of the Youth and Adult Correctional Agency (YACA), the IG must conduct an investigation of a retaliation complaint with 30 days of receiving the complaint and contains a list of acts the IG must consider to determine whether illegal retaliation has occurred. Upon the authorization of the complaining employee, the IG may release the findings to SPB for appropriate action.

This bill provides that an employee of the YACA who is convicted of a felony for having engaged in prohibited sexual activity with an inmate, ward, or parolee shall be terminated in accordance with the State Civil Service Act, and shall not be eligible to be rehired or reinstated within YACA.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division
Chief Counsel's Office

SECTIONS AFFECTED:

- Amend Sections 18935 and 19683 of the Government Code
- Amend Section 289.6 of, and repeal and add Section 6129 of the Penal Code

STATE PERSONNEL BOARD

SB 951 (Hayden) State Employees: Disclosure of improper activities Chapter 673, Statutes of 1999 Effective Date: January 1, 2000

SUMMARY:

Existing law protects employees who disclose improper governmental activities to the State Auditor. This bill eliminates the requirement that a disclosure must be to the State Auditor in order to be protected.

This bill substantially shifts and changes the current burdens of proof imposed upon employees and employers in whistleblower retaliation actions. Under existing law, if an employee brings a whistleblower complaint, or raises a whistleblower defense to an adverse action, that employee must prove by a preponderance of the evidence that the employee's protected disclosure was a motivating or significant factor in the employer's decision to take adverse action against the employee. If the employee meets this burden, the burden shifts to the employer to articulate a non-discriminatory reason for its adverse action against the employee. The burden then shifts back to the employee to show that the employer's articulated reason was pretextual and the real motive was to retaliate against the employee for blowing the whistle.

This bill provides that, in an adverse action or other administrative proceeding, the employee must show by a preponderance of the evidence that retaliation for disclosing improper governmental activity or refusing to obey an illegal order was a "contributing factor" in the employer's actions against the employee. Once the employee has made this showing, the burden then shifts to the employer to show by "clear and convincing" evidence that the adverse action would have occurred for legitimate and independent reasons even if the employee had not made a protected disclosure or refused to obey an illegal order. If the employer cannot meet this burden, the employee will have a complete affirmative defense to the adverse action.

Under the bill, if an employer finds that a supervisor or manager has illegally retaliated against an employee for making a protected disclosure of improper governmental activities, the employer must bring adverse action against that supervisor or manager. If the employer fails to initiate such action, SPB must initiate it.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division
Chief Counsel's Office

SECTIONS AFFECTED:

- Amend Sections 8547, 8547.2, 8547.3, 8547.8, 8547.10, and 8547.12 of, and to repeal and add Section 8547.1 of, the Government Code

**SB 1073 (Ortiz) State Civil Service:
Relating to State Employees
Chapter 283, Statutes of 1999
Effective Date: January 1, 2000**

SUMMARY:

This omnibus bill makes a variety of adjustments to clarify the State Civil Service Act and related laws.

Existing law (Government Code section 18672) provides that “an agency or presiding officer” may issue subpoenas for the attendance of witnesses and production of documents at SPB hearings. Existing law (Government Code section 18680) also permits SPB to go to court to enforce any subpoenas it may issue. This bill would clarify that SPB or its authorized representatives may issue subpoenas to compel the production of documents and attendance of witnesses at SPB hearings. This bill would further provide that, if SPB or its authorized representative has issued a subpoena at the request of a party to an SPB hearing, that party may go to court and enforce that subpoena.

Existing law (Government Code § 18710) provides that, if an appointing power refuses or neglects to comply with any order or decision of SPB, SPB may issue an order to show cause to the appointing power why SPB should not file in court a petition for writ of mandate to compel the appointing power to comply with the order or decision. This bill allows SPB: (1) to issue further findings, after investigation, clarifying or interpreting an SPB order; and (2) to issue further findings, after investigation, as to whether any party has failed to comply with an SPB decision or order. The bill further authorizes SPB, if it issues findings that there was no good cause for the refusal of a party to obey an order, to issue a further order consistent with those findings. That order could then serve as a basis for an aggrieved party to go into court to compel compliance; an aggrieved party could also go to court in lieu of requesting SPB to make further findings.

Existing law grants an employee the right to challenge an appointing authority’s failure to comply with an SPB order; it does not explicitly grant an appointing power the right to challenge an employee’s failure to comply with an SPB order. This bill would authorize SPB to issue orders to any party to an SPB proceeding to compel compliance with SPB’s decisions and orders.

Existing law allows continuous testing for difficult to recruit classes and allows the order of final ratings to be modified by veterans’ preferences.

This bill allows the order of final ratings to be modified for career credits, consistent with applicable statutes.

**SB 1073 (Ortiz) State Civil Service:
Relating to State Employees**

(cont'd.)

Existing law allows any qualifying person receiving state public assistance under the Aid to Families with Dependent Children program to be given priority consideration for civil service positions that are seasonal, non-testing classes.

This bill expands priority consideration to include individuals who meet minimum qualifications for entry-level non-testing classes and requires the SPB to identify those classes that are subject to this article. This bill also appropriately renames the Aid to Families with Dependent Children program to CalWORKS program.

Existing law prohibits a state agency from medically terminating an employee who is vested in the Public Employees' Retirement System (PERS) unless the employee waives the right to retire for disability. (Government Code §§ 19253.5 and 21153) In order to separate such an employee, the state employer must apply to PERS for disability retirement on the employee's behalf. This bill would require a state employer to advance a temporary retirement disability allowance and continue to contribute to employee health plans when the employer files an application for involuntary disability retirement and the employee exhausts his or her leave credits. The employer will be reimbursed for the temporary allowance by PERS from the retroactive retirement benefits PERS will award if it grants the application. If PERS does not grant the application, the employer may deduct any allowance it has paid from the back salary due the employee.

Existing law requires all state departments and agencies to establish an effective upward mobility program for employees in low paying occupations.

This bill deletes language defining "low paying occupations" and require SPB to redefine the term in regulation; delete the term "timetable", which is confusing since goals regarding the number of low paid employees expected to promote must be set annually, and there is, therefore, no long term deficiency to eliminate; reorganize provisions in more logical order; and make other non-substantive language changes to clarify provisions.

Existing law (Government Code § 19585) authorizes an appointing power to terminate, demote, or transfer an employee who fails to meet the requirements for continuing appointment prescribed by SPB, such as licenses, certificates, and other professional qualifications. Employees are entitled to appeal these "non-punitive" actions to SPB. Existing law, however, does not specify the remedy to be afforded where SPB determines that an employee was wrongfully terminated, demoted or transferred under

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**SB 1073 (Ortiz) State Civil Service:
Relating to State Employees**

(cont'd.)

this section. Since such actions are deemed non-disciplinary, existing law (Government Code § 19584) that provides for an award of back pay and benefits when SPB revokes or modifies an adverse action do not apply.

This bill would authorize SPB to award back pay and benefits as set forth in Government Code § 19584 when it revokes a non-punitive action. A similar provision already exists with respect to medical terminations, demotions, and transfers under Government Code §19253.5.

SPB OFFICE(S) AFFECTED/RESPONSIBILITIES:

Appeals Division
Chief Counsel's Office
Personnel Resources and Innovations Division (PRIDe)

SECTIONS AFFECTED:

- Amend Sections 18672, 18680, 18710, 18939, 19063, 19063.1, 19063.2, 19063.5, 19063.8, 19144, 19253.5, 19401, 19402, 19403, 19405, 19406, and 19585 of, to add Section 21419.5 to and to repeal Section 19404 of the Government Code

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VETOED BILLS

AB 442 (CEDILLO) STATE FUNDS: USE TO DISCOURAGE UNIONIZATION

SB 44 (POLANCO) CIVIL RIGHTS: OUTREACH

SB 48 (SHER) PUBLIC RECORDS: DISCLOSURE

SB 172 (ESCUZIA) EMPLOYEES: INSPECTION OF PERSONNEL RECORDS

SB 321 (BACA) STATE EMPLOYEES: MANAGERS AND SUPERVISORS

SB 794 (SPEIER) STATE GOVERNMENT: CONTRACT PROVISIONS

SB 1016 (BOWEN) EMPLOYEE COMPUTER RECORDS